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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 17 2007

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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition and reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not demonstrated her eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Physiology[1] from East China Normal University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the

[1] The petitioner indicates on her curriculum vitae that her Ph.D. was awarded in Molecular Neuroscience but the degree itself only specifies Physiology. Regardless, the petitioner possesses an advanced degree in her field.

petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Commr. 1998)(hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, neuroscience, and that the proposed benefits of her work, improved understanding and treatment of addiction in women, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Initially, the petitioner submitted reference letters from her immediate supervisors and other colleagues at the University of Michigan as well as evidence of her publications and presentations. In response to the director's request for additional evidence, the petitioner submitted letters from more independent references and evidence of a small number of citations. The director concluded that the petitioner had not demonstrated that her accomplishments set her apart from others in the field.

On motion, the petitioner submitted new letters from references who had previously supported the petition and evidence that the petitioner's work has been referenced on U.S. and Chinese websites. The petitioner also submitted an article appearing in *Scientific American* that discusses the work being conducted in the laboratory of the petitioner's current supervisor. The petitioner submits no new evidence of her own achievements on appeal. We will discuss all of the above evidence in detail below.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Moreover, with regard to letters, Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

As stated above, the petitioner obtained her Ph.D. from East China University in 2002. She then joined the laboratory of Dr. [redacted] at the University of Michigan before joining the laboratory of Dr. [redacted] at the same university.

Dr. [redacted] formerly a consultant professor at East China Normal University, discusses the petitioner's work with his former colleague, Professor [redacted]. Specifically, Dr. [redacted] explains that the petitioner's graduate studies focused on the developmental neuroplasticity in the central auditory system. Dr. [redacted] asserts that the petitioner's article on electrical stimulation of the bat auditory cortex was "major research" and confirms that he himself cited it but does not explain the significance of the research that is the subject of this article.

The record confirms that the petitioner's article on the bat auditory cortex is listed as one of at least 30 articles on the bat auditory system listed on the U.S. Department of Agriculture's website. In addition, the record contains evidence that the People's Education Press in China, a publishing house under the Chinese Ministry of Education responsible for researching, compiling, publishing and distributing teaching materials, lists "The Development of DNA Chip Technique," a review article coauthored by the petitioner in 2000, as a teaching reference material. The petitioner's article, however, is a review of the work of others. Thus, its inclusion as a teaching reference material for Chinese education is not indicative of any original research contribution by the petitioner herself.

Finally, the petitioner submitted evidence that two of her articles published in China, one of which appears to be another review of the work of others, were cited once each. The above evidence simply does not establish that the petitioner's original research in China was particularly influential.

Dr. [redacted] asserts that he recruited the petitioner to his laboratory based on her technical skills and her broad range of knowledge in anatomy, physiology, animal behavior and biochemistry. He asserts that while in his laboratory, the petitioner has "greatly advanced our understanding of both leptin (an adipose hormone that regulates appetite and energy balance) and insulin resistance, which are believed to result in obesity and type II diabetes, respectively." As an example of her contributions, Dr. [redacted] asserts that her background allowed her to detect behavioral and psychological anomalies in the transgenic mice used in Dr. [redacted] laboratory that helped him expand his research areas. As examples of her impact in the field, Dr. [redacted] notes that she coauthored an article in a prestigious journal and contributed to a successful grant application to the National Institutes of Health.

We will not presume the impact of an article from the journal in which it appeared. Rather, the petitioner must demonstrate the impact of her individual article. Moreover, all research must obtain funding from somewhere. It does not follow that all research that contributes to continued funding from a government agency warrants a waiver of the alien employment certification in the national interest.

The record contains evidence that the petitioner's article coauthored with Dr. [redacted] entitled "Disruption of the SH2-B Gene Causes Age-Dependent Insulin Resistance and Glucose Intolerance," has been cited three times. The petitioner also submitted letters from two of the researchers who cited the petitioner's work. Dr. [redacted], a professor at the University of Cambridge, asserts that the petitioner's paper on the SH2-B gene provided the "unexpected consequences of deleting the SH2-B gene in mice, that could not have been predicted from previous work on this adaptor protein." He further asserts that this work "has already been well cited by leading figures in the field of insulin action and intracellular signaling." As stated above, however, the petitioner only provided three citations of this article. Dr. [redacted] cited the petitioner's article as one of 125 articles in his review article on Grb proteins. Dr. [redacted] does not suggest in his article that the petitioner's work is more remarkable than the work of numerous other scientists who have contributed to the general pool of knowledge about these proteins. Dr. [redacted] coauthor, Dr. [redacted], subsequently cited the petitioner in her own article presenting a model for the interaction of Grb14 with an insulin receptor. In Dr. [redacted] article, the petitioner's article is cited as one of two articles for the proposition that SH2-B is a positive modulator. In her letter in support of the petition, Dr. [redacted] praises the technical competency required to produce the petitioner's results and asserts that the petitioner "has significantly advanced our knowledge about the role that adaptor proteins play in regulating insulin action." While Dr. [redacted] speculates that the petitioner's work with SH2-B could be applied to other proteins, she provides no examples of such application.

Dr. [redacted] asserts that the petitioner's work on the role of hormones and gender in drug abuse "has placed her at the pinnacle of the field" but provides no concrete examples of the petitioner's influence in the field beyond Dr. [redacted] laboratory. Dr. [redacted] discusses the importance of this area of research, which the director did not question. Dr. [redacted] notes the importance of new technologies, such as viral vector gene transfer and the creation of genetically modified mice. Dr. [redacted] then concludes: "Further advancements in the development and application of this technology rely heavily on the improvements that [the petitioner] delivers, both in quality and reliability." Dr. [redacted] concludes that "minimally qualified" researchers cannot help the laboratory maintain its competitive reputation. The appropriate standard, whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications, does not allow the petitioner to compare herself with U.S. workers who are, for all intents and purposes, not qualified for the job. Another reference from the University of Michigan, Dr. [redacted], asserts that the petitioner was hired "as the only completely qualified scientific talent available, following an extensive search." The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

Another collaborator and coauthor at the University of Michigan, Dr. [redacted] asserts that the petitioner has contributed to the laboratory's fundamental knowledge about the nervous system and molecular biology to improve their methods for the viral vector transfer of specific genes into the brains of laboratory animals and aided in the identification of process aids to improve the laboratory's behavioral methods.

In a subsequent letter, Dr. [redacted] stresses that the petitioner's background in molecular biology and biochemistry is rare in the field of neuroscience. Another reference at the University of Michigan, Dr. [redacted] attests to the petitioner's combination of skills in molecular biology and behavioral neuroscience and the fact that the petitioner's work is supported by U.S. government grants. Dr. [redacted], another professor at the University of Michigan, provides similar information, asserting that the petitioner's diverse knowledge is rare among researchers.

It is the position of Citizenship and Immigration Services (CIS) to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization, including the more narrow category of researchers in a distinguished laboratory. *See id.* at 217. Moreover, special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

Significantly, Dr. [redacted] who did his postdoctoral training in Dr. [redacted] laboratory, acknowledges that the petitioner has not been working in Dr. [redacted] laboratory long enough to publish the results of her work in peer reviewed journals although he notes that it has been the subject of poster presentations at prestigious conferences. The record lacks evidence regarding the significance of poster presentations in relation to oral presentations and published articles. Moreover, the record lacks evidence of the influence of the petitioner's poster presentations.

Dr. [redacted], a professor at the University of California, Los Angeles, praises the petitioner's area of research and the laboratory in which she is now working. He provides no examples, however, of how the petitioner's work has already influenced the field.

Dr. [redacted], a professor at Purdue University who has coauthored an article with Dr. [redacted] and a book with Dr. [redacted], asserts that the petitioner has "developed a series of tools to demonstrate specific ways in which estrogen and dopamine interact at a molecular level with nerve cells." Dr. [redacted] further asserts that this work has succeeded where others have failed. Dr. [redacted] does not, however, provide examples of these "tools" being used in other laboratories or other examples of the petitioner's influence in the field.

The petitioner did submit an article in *Scientific American* entitled "His Brain, Her Brain," reviewing recent research into the differences between male and female brains. The article includes the following paragraph on Dr. [redacted] laboratory:

> A similar situation might prevail in addiction. In this case, the neurotransmitter in question is dopamine – a chemical involved in the feelings of pleasure associated with drugs of abuse. Studying rats, [redacted] and her fellow investigators at the University of Michigan at Ann Arbor discovered that in females, estrogen boosted the release of dopamine in brain regions important for regulating drug-seeking behavior. Furthermore, the hormone had long-lasting effects, making the female rats more likely to pursue cocaine weeks after last receiving the drug. Such differences in susceptibility – particularly to stimulants such as cocaine and amphetamine – could explain why women might be more vulnerable to the effects of these drugs and why they tend to progress more rapidly from initial use to dependence than men do.

The *Scientific American* article does not include citations of the research it is discussing and does not mention the petitioner by name. The article is dated April 25, 2005. While the petitioner presented her work on drug abuse at one conference in 2004, the remaining poster presentations were in 2005, possibly after the April 2005 *Scientific American* article was published. We note that, according to Dr. [redacted] curriculum vitae in the record, she authored "The Effect of Sex and Estrogen on Behavioral Sensitization to Cocaine in Rats" in 2003 and "The Biological Basis of Sex Differences in the Propensity to Self-Administer Cocaine" in 2004. The petitioner is not a coauthor of these articles. Accordingly, the record does not establish that the *Scientific American* article is reporting on the petitioner's research results.

On appeal, counsel and some of the petitioner's references attempt to explain her low citation record in the field of neuroscience. The petitioner, however, had yet to publish any peer-reviewed journal articles in the field of neuroscience and drug addiction as of the date of filing. Rather, in the United States, the petitioner had only published articles on the proteins relating to diabetes.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any postdoctoral or other scientific research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. While the petitioner has impressed her colleagues, the record lacks evidence that her original research has influenced the field to any degree. The record suggests that one article in an area of research the petitioner no longer pursues generated mild attention in the field of diabetes research, a heavily researched area of medical science. As of the date of filing, the petitioner's drug addiction research had yet to be widely disseminated in the field through peer-reviewed journal publications or oral presentations at major conferences such that we can gauge the influence of that work.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job

offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.